

MHMM140041712019



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PART A
[Para 44(i) of Chapter VI of Criminal Manual]

C.C.No.540/PW/2019

Exhibit No.37

IN THE COURT OF THE JUDICIAL MAGISTRATE (FIRST CLASS)
18TH COURT, GIRGAON, MUMBAI.

(Presided over by Shri S.G. Chimankar)

JUDGMENT

Details of FIR / Crime and Police Station	:	290/2018 of Dr. D.B. Marg Police Station
The date of Judgment	:	15/11/2025
Case No.	:	Criminal Case Number 540/PW/2019
Prosecution / Complainant	:	The State (Through Dr. D. B. Marg Police Station, Girgaon, Mumbai)
Represented by APP (Complainant's Advocate)	:	Shri Atif Shaikh and Smt. Seema Lod
Accused	:	1] Jakir Abdul Kayyum Qureshi, age 48 years, Occ.Nil, R/o.Sartan Apartment, 401, 4 th Floor, Opp.

		Sai Nagar Police Chowky, Nalasopara West, Dist.Palghar. 2] Imran Mainuddin Khan, Age 39 years, Occ.Nil, R/o.Reliable Apartment, D 605, D Wing, Achole Road, Nalasopara East, Dist. Palghar.
Represented by (Learned Advocate for accused)	:	Shri Tukaram Dhondge for accused

PART B
[Para 44(ii) of Chapter VI of Criminal Manual]

Date of offence	:	28/12/2018
Date of FIR	:	28/12/2018
Date of Complaint	:	Nil
Date of Framing of charge	:	30/08/2022
Date of commencement of evidence	:	17/10/2023
Date of which judgment is reserved	:	-----
Date of Judgment	:	15/11/2025
Date of sentencing order, if any	:	-----

APPENDIX
PART C
[Para 44(iii) of Chapter VI of Criminal Manual]

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution :

RANK	NAME	EXHIBITS	NATURE OF
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			EVIDENCE
PW1	Parshuram Sheshnarayan Tiwari	Exh.20	Informant

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS

D. Prosecution :

Sr.No.	EXHIBIT NUMBER	DESCRIPTION
1]	21	Xerox copy of agreement
2]	22	Report / FIR

D. Material Objects :

Sr. No.	MATERIAL OBJECT NUMBER	DESCRIPTION
NIL		

Accused Details

Rank of the accused	Name of the accused	Date of arrest	Date of Release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of section 428 Cr.PC.
1]	Jakir Abdul Kayyum Qureshi	07/03/2019	07/03/2019	406, 420 of I.P.C.	Acquitted	----	----
2]	Imran Mainuddin Khan	07/03/2019	07/03/2019		Acquitted	----	----

Abbreviations used in this Judgment (in alphabetical order)

Indian Penal Code	I.P.C.
Prosecution witness	PW
Punishable under section	p.u.s.

JUDGMENT
(Delivered on 15/11/2025)

The prosecution has filed its complaint punishable under sections 406, 420 of the Indian Penal Code.

In short the prosecution case is as under :-

2] On 13/06/2017, informant had entered into agreement of sale of Flat with accused. Accused had executed a notarized agreement for sale for the amount of Rs.12,00,000/-. Out of which informant had paid part payment of Rs.11,90,000/- by way of cheque to accused. However, accused had not performed his part of contract and had not given possession of flat to the informant. Hence, this complaint.

Charge, Plea and defence of accused :-

3] Accused appeared and charge u.s. 406, 420 of the I.P.C. had been recorded vide Exh.7 to which they pleaded not guilty and claimed for trial. The statement of accused 313(i)(b) of Cr.P.C. is dispensed with as there is no incriminating evidence came on record against the accused. The defence of the accused as it appears from mode of cross examination is of total denial.

Points of determination :-

4] Heard ld. APP and ld. Counsel for accused. Considering evidence available on record, following points arose for my determination and I have recorded my findings along with the reasons thereon as under :

Sr. No.	Points	Findings
1)	Does the prosecution prove that on from the year 2012 to 28/12/2018 accused in furtherance of their common intention were entrusted with amount of Rs.11,90,000/- by the informant for purchase of flat and accused converted the same for their own use ?	... <u>In the negative.</u>
2)	Does the prosecution prove that accused cheated the informant by dishonestly inducing him to deliver an amount of Rs.11,90,000/- ?	... <u>In the negative.</u>
3)	What order ?	As per final order.

FINDINGS

As to points no.1 and 2 :

5] In the present case, the prosecution has adduced evidence of only PW1 Parshuram Sheshnarayan Tiwari who is the informant/victim, who deposed that, he was in need of flat, accused was indulging in the business of construction of flat. Accordingly, he approached with the accused. Accused had shown him a site at Nalasopara, accordingly he had purchased the flat. Accused executed notarized agreement for sale vide Exh.21, thereby agreed to give possession of flat within stipulated period. Informant had made part payment of Rs.4,75,000/-. Informant had ready and willing to perform the part of contract, however accused had not given possession of flat to him. This witness had lodged report Exh.24. During cross-examination, this witness has admitted that he has not filed any suit in Civil Court regarding this dispute. The original agreement is not filed

on record.

6] I have gone through the record particularly, document of agreement for sale Exh. 21. I have gone through the document, from which appears that this is agreement for sale executed before the Notary by accused in favour of informant in respect of flat at Nalasopara. Wherein it appears that informant had paid part consideration amount of Rs.11,90,000/- through cheque and agreed to pay remaining amount at the time of possession. However, prosecution came with the case that accused had not performed his part of contract and therefore accused has committed fraud and cheated the informant, thereby committed a crime.

7] Considering documents and oral evidence available on record, it appears that dispute is arising out of non performance of part of contract by accused. Cause of action is arose after non performance of contract when accused had not delivered possession as agreed. Besides this, nothing else in the prosecution case. Considering the nature of dispute, it reflects that dispute is arising out of non performance of contract only, which is Civil in nature and criminal liability cannot be arises at any stretch of imagination. Hence, I answer point nos.1 and 2 in the negative.

As to point No.3 :

8] In view of my findings to point nos.1 and 2 as aforesaid, the prosecution has failed to prove its case beyond reasonable doubt. Hence, the accused are entitled for acquittal. Therefore, in answer to point no.3, I

pass the following order :-

ORDER

- 1] Accused no.1] Jakir Abdul Kayyum Qureshi and 2] Imran Mainuddin Khan, are hereby acquitted of the offence punishable under sections 406, 420 of the Indian Penal Code vide section 248(1) of the Code of Criminal Procedure.
- 2] Their bail bonds stand surrendered.
- 3] The case is disposed-of accordingly.
- 4] Dictated and pronounced in open court.

Place : Girgaon, Mumbai.
Date : 15/11/2025

(S.G. Chimankar)
Judicial Magistrate (First Class),
18th Court, Girgaon, Mumbai